DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "accessory in the form of another first portion" as stated in claim 8 must be shown or the feature canceled from the claim. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 14 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). For examining purposes, claim 14 is interpreted as being dependent on claim 3 only.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Lancie et al. (US 3,161,102) in view of Kelischek (US 3,308,707).

Regarding claim 1, Lancie et al. discloses an oboe shown in Fig. 1 to have an elongate body having a first portion or upper joint U and a second portion or lower joint L that are adapted to be nested one in the other. Said first portion U is further shown to carry an onion or ferrule 5 at one end 9, adapted to receive a reed 6 (column 4 lines 8-10). Said second portion L is shown to be nested with a horn or bell joint B. A plane of transverse nesting of said first portion U and said second portion L is further shown to be situated between lines d and e, located octave holes and note holes. Lancie et al. fails to explicitly disclose that note holes to be only in the second portion and the horn.

However Kelischek teaches a double reed woodwind instrument resembling an oboe, shown in FIG. 1 to have an elongate body, a first portion or reed cap base 54 having an onion or reed control ring member 80, and adapted to receive a second portion 18. A plane of transverse nesting between these two portions is further shown to be near the top of the instrument, where no note holes are located in said first portion 54.

Given the teachings of Kelischek, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the oboe disclosed in Lancie et al. with providing the plane of transverse nesting near the top of the instrument so that note holes are only in the second portion and the horn. It has been held that rearranging parts of an invention involves only routine skill in the art. In *re Japikse*, 86 USPQ 70. Doing so would provide an "improvement of the relative intonation of different portions of the range of the instrument while at the same time maintaining or improving the character and quality of the tone produced by the instrument" as stated by Lancie et al. (column 1 lines 15-19).

In reference to claims 2 and 3, Lancie et al. modified by Kelischek discloses an oboe having a transverse nesting plane situated between the octave holes and the note holes as stated above, but fails to explicitly disclose said transverse nesting plane to be situated between the octave holes and trill holes, so the first body portion includes only octave holes.

However it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the transverse nesting plane to be situated between

the octave holes and trill holes, so the first body portion includes only octave holes, since it has been held that rearranging parts of an invention involves only routine skill in the art. In *re Japikse*, 86 USPQ 70. Doing so would provide an "improvement of the relative intonation of different portions of the range of the instrument while at the same time maintaining or improving the character and quality of the tone produced by the instrument" as stated by Lancie et al. (column 1 lines 15-19).

In reference to claim 4, Lancie et al. modified by Kelischek discloses an oboe as stated above, but fails to explicitly disclose the G sharp key to extend partly under the E flat key.

However it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the G sharp key to extend partly under the E flat key, since it has been held that rearranging parts of an invention involves only routine skill in the art. In *re Japikse*, 86 USPQ 70. Doing so would provide a "reasonable degree of accuracy in the pitch relationship" within a desired range as stated in Lancie et al. (column 1 lines 48-52).

In reference to claims 5, 6, 10, and 12-14, Lancie et al. modified by Kelischek discloses an oboe as stated above, but fails to explicitly disclose the first portion or oboe head to have a length of substantially 102 mm.

However it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to provide the first portion or oboe head to have a length of substantially 102 mm, since such a modification would have involved a mere change in the size of a component. A change in size is generally

recognized as being within the level of ordinary skill in the art. In *re Rose*, 105 USPQ 237 (CCPA 1955). Doing so would allow mass production of the oboe where each instrument would have the same measurements and the same qualities.

In reference to claim 7, Lancie et al. modified by Kelischek discloses an oboe as stated above, but fails to explicitly disclose the second portion to have a length of substantially 370 mm.

However it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to provide the second portion to have a length of substantially 370 mm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In *re Rose*, 105 USPQ 237 (CCPA 1955). Doing so would allow mass production of the oboe where each instrument would have the same measurements and the same qualities.

In reference to claim 8, Lancie et al. discloses an oboe as stated above, but fails to disclose an accessory in the form of another first portion that is interchangeable with the first portion.

However Kelischek teaches a double reed woodwind instrument resembling an oboe, shown in Fig. 3 to have an accessory or crook 104 that resembles a portion or lower end 26 of the instrument and is interchangeable with said portion 26 (column 3 lines 65-70).

Given the teachings of Kelischek, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify the

oboe disclosed by Lancie et al. with an accessory in the form of another portion, such as the first portion that is interchangeable with that portion. Doing so would provide emergency parts that could be borrowed when needed in order to properly play the instrument, as taught by Kelischek (column 4 lines 60-62).

In reference to claim 9, Lancie et al. modified by Kelischek discloses an oboe having a first portion or oboe head carrying an onion at one end adapted to receive a reed, and is adapted to be nested with a second body portion as stated above.

In reference to claim 11, Lancie et al. modified by Kelischek discloses an oboe as stated above, where the first portion or oboe head typically has trill holes.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. A list of pertinent prior art is attached as form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER UHLIR whose telephone number is (571)270-3091. The examiner can normally be reached on Monday-Thursday 8:00am-6:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-1988.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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June 11, 2008
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